



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR GERALD J. O'TOOLE, NEW ENGLAND

DISTRICT COUNSEL

CC:NER:NED:BOS

Attn: John Mikalchus

FROM: Nancy Romano, Senior Technician
Reviewer, Branch 3 (Administrative
Provisions & Judicial Practice)

CC:PA:APJP:Br.03

SUBJECT: Computation of the Assessment Statute
for a Short Year Return

This Field Service Advice responds to your memorandum dated August 4, 2000. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be used or cited as precedent.

DISCLOSURE STATEMENT

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TL-N-4402-00

LEGEND

corporation A =

corporation B =

year 1 =

year 2 =

year 5 =

S short year =

C short year =

ISSUE

When does (did) the period of limitations for the assessment of tax with respect to corporation A's S short year expire.

CONCLUSIONS

[REDACTED]

FACTS

Prior to year 1, corporation A properly elected to be treated as a small business corporation under section 1362(a). On July 1, year 1, corporation B purchased corporation A's outstanding stock, which terminated corporation A's election to be treated as a small business corporation. Corporation B properly filed an election to treat its purchase of corporation A stock as a purchase of corporation A's assets under section 338 (h)(10).

Corporation A and corporation B are calendar year taxpayers. Corporation B and its subsidiaries, including corporation A, timely filed a request for an automatic extension of time to file their consolidated return for year 1. Corporation A filed its Form 1120S for its S short year on April 21, year 2. On October 22, year 2, corporation A amended its Form 1120S for its S short year. Corporation B and its subsidiaries timely filed a consolidated income tax return for year 1, which included corporation A's C short year, on September 15, year 2.

TL-N-4402-00

The former shareholders of corporation A extended the statute of limitations on their individual returns for year 1, to December 31, year 5, but corporation A will not agree to extend the period of limitations on assessment of tax for its S short year.

The Service is auditing corporation A with respect to its S short year. In the audit, issues have been raised with respect to substantial adjustments that flow through to corporation A's shareholders and with respect to a built-in gains tax liability, which is taxable at the entity level.

As we understand your request for advice, you need our assistance only in determining the period of limitations on assessment of any tax at the entity level.

LAW AND ANALYSIS

The amount of any tax imposed by the Internal Revenue Code generally must be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed. Sec. 6501(a). A return of tax imposed by the Internal Revenue Code, except tax imposed by chapters 3, 21, or 24, of the Internal Revenue Code, received before the last day prescribed by law or regulation is considered filed on such last day. Sec. 6501(b). For purposes of section 6501(b), the last day prescribed by law or regulation for filing a return is determined without regard to any extension of time for filing the return. Treas. Reg. § 301.6501(b)-1.

Section 1362(e)(4) provides that any taxable year of a corporation in which a termination of an election to be treated as a small business corporation under section 1362(a) takes effect (unless the termination takes place on the 1st day of such year) is an "S termination year." In the case of an S termination year, the portion of such year ending before the 1st day for which the termination is effective shall be treated as a short taxable year for which the corporation is an S corporation. Sec. 1362(e)(1)(A). The portion of the S termination year beginning on the 1st day that the termination is effective shall be treated as a short taxable year for which the corporation is a C corporation. Sec. 1362(e)(1)(B). The due date for filing the return for the short taxable year for which the corporation is an S corporation under section 1362(e)(1)(A) is the same date by which the return for the short taxable year for which the corporation is a C corporation (including any extensions thereof) must be filed. Sec. 1362(e)(6)(B); Treas. Reg. § 1.1362-3(c)(5). The intent of section 1362(e)(6)(B) is to make certain that the S short year return is not due before the C short year return. H. Rep. 97-826, p. 11 (1982)("The return for the short subchapter S year will be due on the same date as the return for the short subchapter C year is due").

Similarly, if a small business corporation becomes a member of an affiliated group of corporations filing consolidated returns in a transaction other than a qualified stock purchase for which an election under section 338(g) is made, the S short year

TL-N-4402-00

ends on the day before the 1st day for which the termination is effective. Treas. Reg. § 1.1502-76(b)(1)(ii)(A)(2). In such cases, the small business corporation generally must file a separate return for any portion of its taxable year for which income is not included in the consolidated return filed by its common parent on or before the due date, including any extensions of time thereof, for filing the consolidated return. Treas. Reg. § 1.1502-76(c)(1). Treasury Regulation § 1.1502-76(b)(1)(ii)(A)(2) applies to transactions occurring after November 10, 1999.

In general, a corporation that is a calendar year taxpayer is required to file any return made under section 6012 by the 15th day of March of the year immediately following the close of the calendar year. Sec. 6072(b). Corporations subject to taxation under subtitle A are required to file a return under section 6012. Sec. 6012(a)(2). The Secretary may grant a reasonable extension of time for filing any return, although such extension of time may not exceed 6 months unless the taxpayer is abroad. Sec. 6081(a). In the case of a corporation, the Secretary must grant an automatic 3 month extension if the corporation requests such extension on the prescribed form and if the corporation pays the amount properly estimated as tax before the date prescribed for payment of tax. Sec. 6081(b).

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

[REDACTED]

[REDACTED]

1

[REDACTED]

2

[REDACTED]

TL-N-4402-00

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Please call if you have any further questions.

cc: Michael P Corrado
Assistant Regional Counsel (TL)
Northeast Region